

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

)	CIVIL ACTION NO. 05-11546-RCL
MYFTAR MYRTAJ AND)	
FETA LILAJ ,)	
Plaintiffs,)	Jonathan R. Sigel, BBO #559850
)	Kathryn E. Abare-O’Connell, BBO #647594
v.)	
)	
CULLINAN ENGINEERING CO., INC.)	
AND WAYNE MORY)	
Defendants.)	
)	
)	

MOTION TO DISMISS PLAINTIFFS' COMPLAINT
FOR INSUFFICIENT SERVICE OF PROCESS

Defendants Cullinan Engineering Co., Inc. (“Cullinan” or “the Company”) and Wayne Mory (collectively “Defendants”) respectfully move this Court to dismiss each count of Plaintiffs’ Complaint pursuant to Rule 12(b)(4), Fed. R. Civ. P., on the grounds that Plaintiffs failed to properly effectuate service on Defendants. As grounds for their motion, Defendants state the following:

1. Plaintiffs filed this action in this Court on July 21, 2005.

2. Pursuant to Local Rule 4.1 and Rule 4(m) of the Federal Rules of Civil Procedure, Plaintiffs were required to effect service of process upon each of the Defendants and to file returns of service with the Court within 120 days of filing their Complaint. Accordingly, Plaintiffs were required to file returns of service with the Court on or before November 18, 2005.

3. However, as of this date, process has not been properly served upon Defendants Wayne Mory and Cullinan Engineering and Plaintiffs have not filed any return of service with this Court.

4. Furthermore, Plaintiffs' attempt to effectuate service of process on Defendants by mail is insufficient as a matter of law because federal and Massachusetts law require personal service upon individuals and corporations within the Commonwealth.

5. In support of their Motion, Defendants rely upon their accompanying Memorandum in Support of Defendants' Motion to Dismiss Plaintiffs' Complaint.

WHEREFORE, Defendants respectfully request that the Court dismiss Plaintiffs' Complaint in its entirety.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned assert that they have attempted to confer with Plaintiff Myftar Myrtaj in a good faith effort to resolve the instant Motion, but have been unable to do so.

The undersigned assert that they have conferred with Plaintiff Feta Lilaj in a good faith effort to resolve the instant Motion, but have been unable to resolve or limit the issues raised by the Motion.

CULLINAN ENGINEERING CO., INC. AND
WAYNE MORY,

By their attorneys,



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November 30, 2005